THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 23.04.2007

\+ **WP(C) 16208/2006**

Ms BHUPALI SABHARWAL (MINOR) REPRESENTED TROUGH HER NATURAL GAURDAIN AND FATHER SHRI DEVENDER SABHARWAL ... Petitioners

- versus -

THE DIRECTORATE OF EDUCATION THROUGH ITS ASSTT. DIRECTOR OF EDUCATION AND ANTOHER ... Respondents

Advocates who appeared in this case:
For the Petitioner : Mr S.K. Chaturvedi with Mr Nishi Ranjan Singh.
For the Respondent/State : Ms Sujata Kashyap with Mr Chander Mani Bhardwaj.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J(ORAL)

1. The petitioner, who is a minor, has approach this court through her natural guardian and father Shri Devender Sabharwal. The petitioner is aggrieved by that fact that her name has been struck off the rolls of Class XI of Shaheed Amir Chand Government Sarvodya Vidyalaya, Sham Nath Marg (Ludlow Castle) Delhi. The impugned communication dated 27.07.2006 informed the petitioner that her name had been struck off from the rolls of class

XI of the said school as she had not obtained at least 55 % marks in the aggregate which was necessary for grant of admission to students who had passed class X from the National Institute of Open Schooling (NIOS).

2. There is some controversy with regard to the fact as to whether the petitioner had been granted admission provisionally or on a regular basis. However, we need not to go into this issue because the main question is whether the petitioner was eligible for admission to class XI of the said school on the basis of admitted facts or not. It is an admitted position that the petitioner passed class X examination from the NIOS. It is also an admitted position that she appeared in the said examination in the following subjects :- Hindi, English, Social Science, Science and Home Science. It is also an admitted position that in the aggregate she got 37.8% marks.

3. The learned counsel for the respondents referred to the circular dated 19.08.2004 issued by the Directorate of Education which, according to them as per the affidavit of Mr S. K. Saraswat, Deputy Education Officer, Zone VII, District North filed on 20.04.2007, governs the admission of students from NIOS to class XI of schools run by the government of NCT of Delhi. The said circular reads as under :

"CIRCULAR

In continuation to Department Circular No.F.DE.23(28)Sch. Br/2004/9824-9904 dated 19.05.2004

> and in view of late declaration of NIOS results, the competent authority is pleased to extend the date of admission for NIOS students only, as a special case upto 31.08.2004. It is to be ensured that our own school students passing Compartmental Examination-2004 are given first preference and not denied admission. Grant of admission to NIOS students will be subject to the condition that they have studied relevant subjects in Class Xth and have acquired at least 55% in aggregate. The admission will be further subject to availability of seats. Class strength should not go beyond 40. It is also to be ensured that the age of the applicant is not more than 17 years as on 30th September, 2004.
>
> Power of admission has already been delegated to concerned RDEs by the competent authority."

4. Referring to the above circular, the learned counsel for the respondents, submitted that there are two requirements before a student from NIOS could be granted admission into class XI of the said Government schools which include the school in question. The conditions being that the student should have studied the "relevant subjects" in class X and should have attained at least 55% marks in the aggregate. The learned counsel submits that neither of these conditions were satisfied in the case of the petitioner and, therefore, her name was correctly struck off from the rolls. It is submitted by her that the "relevant subjects" are – Hindi, English, Social Science, Science and Mathematics. The petitioner did not have mathematics and instead had Home Science which is not recognised as a relevant subject. Secondly, the learned counsel submitted that the petitioner obtained 37.8% marks in the aggregate whereas the requirement was that she should have obtained 55% marks. Thus,

according to her, on both counts, the petitioner was not entitled to be admitted. She submitted that when the petitioner was granted admission it was only a provisional admission on the basis of a School Leaving Certificate issued by Mount Olivet School, Sant Nagar, Burari, Delhi. The School Leaving Certificate does not disclose the subjects taken or the marks obtained. The mark sheet was produced on 24.7.2006 and it revealed that the petitioner did not pass the class X examination from Mount Olivet School but from National School of Open Studies and the mark sheet also revealed that the aggregate percentage was only 37.8% and that the student had not taken Mathematics in class X which was an essential requirement. It is on the basis of this information, which the school received only on 24.7.2006, that the petitioner's admission was cancelled and her name was struck off from the rolls on 24.7.2006 and communicated to the petitioner by the impugned communication dated 27.7.2006.

5. The learned counsel for the petitioner submitted that the petitioner had been granted regular admission and not provisional admission and secondly that the said communication was served on the petitioner only in September, 2006. These are, however, not relevant considerations because what has to be seen is whether the petitioner was eligible for admission or not.

6. Insofar as the requirements for admission are concerned, the same have been specified by the said circular which clearly stipulates that the students ought to have taken the relevant subjects and ought to have obtained at least 55% marks in the aggregate. None of these conditions have been met by the petitioner and, therefore, the action of the respondents in setting aside the admission whether provisional or regular cannot be faulted. The same has been done immediately on the receipt of information which had not been made available to the school earlier when the admission was granted.

This writ petition is without merit and is dismissed. No costs.

BADAR DURREZ AHMED
(JUDGE)

April 23, 2007
M